Southwestern Bell Mobile Systems

APR - 5 1993

FEDERAL COMMENTE ATMENT COMMISSION
OFFICE OF THE SECRETARY

April 2, 1993

FCC-MAIL ROOM

Linda M. Heed Attorney

Via Airborne 4158636462

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Stop Code 1170
Washington, D.C. 205

RE: RM-8179; Filing of Reply Comments of Southwestern Bell Mobile Systems, Inc.

Dear Ms. Searcy:

Enclosed for filing in the above referenced proceeding are the original and five copies of the Reply Comments of Southwestern Bell Mobile Systems, Inc., Supporting the Cellular Telecommunications Industry Association's Petition for Rulemaking. Please file these Reply Comments among the papers in this proceeding.

Please return a file-marked copy of the Reply Comments to me in the enclosed self-addressed stamped envelope.

Thank you for your assistance.

Very truly yours,

Enclosure

cc Service List (with enclosure)

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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C.

FEDERAL COMMUNICATIONS COMMISSION
COFFICE DE THE SECRETARY

To:

The Federal Communications Commission

REPLY COMMENTS OF SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

Southwestern Bell Mobile Systems, Inc. ("SBMS") submits these Reply Comments in the above referenced proceeding.

INTRODUCTION

A number of parties have filed comments on the Cellular Telecommunications Industry Association's ("CTIA") Petition in the above referenced Rulemaking. All parties filing comments support CTIA's request that the Commission institute a Rulemaking to consider the status of cellular carriers as dominant versus non-dominant. Of those filing comments, only the National Cellular Resellers Association ("NCRA") advocates that cellular carriers be classified as dominant and that they be subjected to as much, rather than as little,

¹ Petition for Rulemaking (hereafter "Petition") filed January 29, 1993.

² NCRA's Comments assume that cellular carriers are currently accorded dominant status, though as explained in SBMS' initial Comments in this proceeding, cellular carriers have never been declared dominant and therefore remain non-dominant pursuant to the Commission's classification scheme for carriers.

regulation as possible. The basic question at this juncture is, of course, whether or not a Rulemaking should be established, and all parties agree that one should. Accordingly, this is not the time or place to fully address NCRA's statements about the cellular industry. SBMS does, however, wish to comment briefly on some of the more egregious misstatements of fact and mischaracterizations of the record made by NCRA.

ROAMING CHARGES

On page seven of its comments, NCRA argues that roaming charges are necessarily jurisdictionally interstate. However, the Commission quote it cites in support of its argument comes from an Interconnection Order that describes, not roaming services, but call delivery or call forwarding, a service that CTIA concedes may sometimes constitute interstate service.³

NCRA further argues that true roaming services are "arguably" interstate because they permit a cellular call to be made by an end user from state A while he is in state B. That analysis makes no sense. The fact that a customer's home system is in another state does not transform an otherwise local call into an interstate call. Further, NCRA's analogy

The Commission described as interstate a service "whereby a call to a subscriber's local cellular number will be routed to them over interstate facilities when the customer is 'roaming' in a cellular system in another state." It is not the fact that a customer is roaming that implicates interstate service in such a scenario -- rather, it is the interstate delivery of a call originally placed to a customer's cellular number in his home market.

of roaming services to operator services is inaccurate, and CTIA correctly characterizes a cellular carrier's functions as those of billing and collection.

CONNECTING CARRIERS

NCRA states that CTIA cannot reasonably suggest that cellular carriers, including Southwestern Bell, should be exempt because of their "small size." CTIA never made such a suggestion. It did request that the Commission clarify the status of at least some cellular carriers as connecting carriers. Neither that question nor the question of dominance in interstate services hinges on the size of a cellular carrier, however. Were revenue or absolute size the indicator

before the actual licensing of any cellular service areas) the Commission stated that it was providing for only a "marginal amount" of facilities based service competition. Actually, in rejecting proposals for a single cellular licensee in each area, the Commission simply stated that "even the introduction of a marginal amount of facilities-based competition into the cellular market will foster important public benefits of diversity of technology, service and price." In practice in the years since that statement, the substantial competition that has developed in the cellular industry has fostered the hoped for benefits. The Commission recently found that "facilities-based carriers are competing on the basis of market share, technology, service offerings, and service price."4

The GAO, in its Report on Concerns about Competition in the Cellular Telephone Service Industry, reported finding no evidence of any anticompetitive or collusive behavior in cellular telephone markets. Although the NCRA claims that cellular rates have not fallen, the GAO found a significant decline in real prices in the cellular market from 1985 to 1991. Cellular markets may not operate "perfectly"

⁴Report and Order, CC Docket No. 91-34, released June 10, 1992 (emphasis added). The Commission also noted there that a similarity in price by itself does not necessarily indicate anti-competitive behavior, and may actually indicate vigorous price competition. <u>Id</u>.

⁵ GAO, Concerns About Competition In Cellular Telephone Service Industry, p. 24 (1992).

competitively, but they do, within the constraints of the Commission's licensing scheme, operate very competitively. Indeed, the Department of Justice (which NCRA cites as supporting its view of cellular) has specifically urged this Commission to give cellular licensees and those against whom they compete (including other wireless services) "the freedom to design their service offerings to offer a combination of functionality and cost -- and therefore price -- that, in their profit-seeking judgment, is most likely to attract customers."6 The Department further urged that the Commission exercise caution in imposing regulatory constraints cellular licensees that would impede their ability to compete with each other or would constrain the service offerings that individual licensee believed would be a profitable opportunity. Indeed, the Department specifically stated that the Commission should not subject cellular licensees to federal rate regulation.7

MARKET POWER

NCRA defines the market within which it believes cellular carriers have market power as the two facilities-based cellular carriers in a particular region. It completely

⁶ In the matter of the Amendment of the Commissions' Rules to Establish New Personal Communications Services, General Docket No. 90-314, E.T. Docket No. 92-100, Comments of the United States Department of Justice, p. 8, filed November 9, 1992.

⁷ <u>Id</u>. at 9.

ignores competition provided by other wireless services, other providers of interstate service, and resellers of cellular service themselves. In so doing it has not addressed the appropriate market for reviewing dominance of cellular carriers in interstate services.

Another flaw in NCRA's analysis is that it focuses on However, the rates referred to are "cellular rates." apparently airtime rates charged regardless of the intra or interstate nature of service. Indeed, in many instances (particularly for RBOC affiliates) long distance service is a separate charge that is billed directly by the IXC to the cellular customer on a separate statement. The analysis here should be with respect to interstate telecommunication service offerings by cellular carriers -- not cellular airtime provided by facilities based cellular companies. There is no the relevant market of interstate duopoly in voice telecommunications. Dr. Jerry Hausman, Professor of Economics at MIT, who has conducted significant research into the telecommunications and cellular industries has concluded that cellular carriers including RBOC affiliates, cannot hope to monopolize or otherwise exercise market power in the interLATA long distance market. 8 Customers of cellular companies remain

It would be a mistake to introduce onerous federal tariffing requirements for cellular carriers for their limited interstate operations with the attendant anticompetitive effect it would have on their local operations. The majority of states have found the cellular industry to be sufficiently competitive that they do not regulate the price of cellular As evidence that regulation in a competitive industry does not further competitive objectives, cellular prices tend to be higher in those states that regulate cellular prices and lower in those states where prices are determined by market forces. 10 It is ironic that the NCRA sites a study from the California Public Utilities Commission on estimated rates of return for facilities based carriers in that state. 11 California has historically imposed significant state regulation on the cellular industry, and its conclusions may be consistent with the conclusion that increased regulation in the cellular market results in higher rates and fewer competitive opportunities.

CONCLUSION

NCRA's overstatements and misstatements about the cellular industry and the local duopoly notwithstanding, cellular carriers do not occupy a dominant position in the provision of interstate telecommunication services and remain

⁹Hausman Affidavit at p.6.

¹⁰ <u>Id</u>. at p. 10.

¹¹ NCRA Comments at p.16.

appropriate subjects for the maximum streamlining of tariff There is no evidence that cellular carriers regulation. operate anticompetitively. In fact, the decrease in prices over time and the lower rates in non-regulated states testify to the competitive nature even of local services in cellular. Accordingly, SBMS respectfully requests that the Commission institute a Rulemaking and declare cellular carriers nondominant and subject to maximum streamlining of tariff regulation.

Respectfully submitted,

SOUTHWESTERN BELL MOBILE SYSTEMS, INC.

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April 5, 1993

CERTIFICATE OF SERVICE

The undersigned certifies that on the 2nd day of April, 1993, a copy of the foregoing Reply Comments were sent by first class mail, postage prepaid to the following service list:

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